



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	12 VAC 30-90
Regulation Title:	Modification to Nursing Facility Reimbursement Formula
Action Title:	2002 Nursing Facility Reimbursement Reductions
Date:	May 22, 2002; GOV ACTION NEEDED BY 6/27

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a change in the Virginia Appropriations Act that must be effective within 280 days from the date of enactment of the Appropriations Act (HB 30, Item 325 HH 1 and 2) and this regulatory action is not otherwise exempt under the provisions of the *Code* § 2.2-4006. Since DMAS intends to continue regulating the two issues contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance to § 2.2-4007.

This regulatory action proposes to change the indirect patient care operating ceiling and median calculation, and eliminate the inflation adjustment for indirect patient care rates and peer group ceilings for indirect costs in State Fiscal Year 2003 for nursing facilities. These issues will be discussed in this order.

Indirect Patient Care Ceiling

This action amends the Title XIX State Plan for Medical Assistance by decreasing the indirect patient care operating ceiling from 106.9% to 103.9% of the median of facility specific indirect cost per day, and changing the fiscal year, on which the calculation of the median is based, from calendar year 1998 to calendar year 2000. These amendments were mandated by the General Assembly in the 2002 Appropriations Act (Item 325 #41C).

Inflation Adjustment

This action also amends the Title XIX State Plan for Medical Assistance to eliminate the increase for inflation for indirect patient care rates and peer group ceilings for indirect costs in State Fiscal Year 2003. This amendment was mandated by the General Assembly in the 2002 Appropriations Act (Item 325 #41C).

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements.

The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The regulatory action proposes interim modifications to Methods and Standards for Establishing Payment Rates-Long Term Care at 12 VAC 30, Chapter 90, Section 41 by adding a new section 12 VAC 30, Chapter 90, Section 41.1. This new section provides for modifications to the Nursing Facility Reimbursement Formula as outlined below.

Indirect Patient Care Ceiling

Currently the indirect patient care operating ceiling is set at 106.9% of the median of facility specific indirect cost per day. The calculation of the median is based on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 1998. In accordance with the State Plan, DMAS revises its ceilings every two years. This regulatory action is necessary to implement revisions to calculating indirect costs as directed by House Bill 30. The Budget Bill reduced funding, mandating a decrease in the indirect patient care operating cost ceiling. The ceiling will decrease from 106.9% to 103.9% of the median of nursing facility specific costs. The General Assembly made the decision to set the indirect patient care operating ceiling at 103.9%, and to base the calculation of the median on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 2000.

Inflation Adjustment

Nursing facilities currently have their prospective operating cost ceilings (direct and indirect) and prospective operating cost rates adjusted for inflation. The allowance for inflation is based on the percentage of change in the moving average of the Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by Data Resources, Incorporated (DRI-WEFA), adjusted for Virginia, determined in the quarter in which the nursing facility's most recent fiscal year ended. House Bill 30 directed that the Department of Medical Assistance Services amend the State Plan for Medical Assistance to eliminate the increase for inflation to indirect patient care rates in State Fiscal Year 2003. No changes are made in reimbursement for direct patient care.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

Indirect Patient Care Ceiling

The General Assembly has mandated these changes to the State Plan through the Appropriations Act. Due to the legislative mandate, the agency has no discretion in whether to implement these changes.

Inflation Adjustment

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Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These regulatory actions will not have any negative effects on the institution of the family or family stability. They will not increase or decrease disposable family income or erode the marital commitment. They will not discourage economic self-sufficiency, self-pride, nor the assumption of family responsibilities.